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Robert Albergo and David Irwin

11  
12 UNITED STATES DISTRICT COURT

13 SOUTHERN DISTRICT OF CALIFORNIA

14  
15 ROBERT ALBERGO, an individual,  
16 and DAVID IRWIN, an individual,

17 Plaintiffs,

18 v.

19 IMMUNOSYN CORPORATION, a  
Delaware corporation, ARGYLL  
20 BIOTECHNOLOGIES, LLC, a Texas limited  
liability company, JAMES T. MICELI, an  
21 individual, DOUGLAS A.  
MCCLAIN, JR., an individual, ARGYLL  
22 EQUITIES, LLC, a Texas limited liability  
company, STEPHEN FERRONE, an  
23 individual, DOUGLAS A. MCCLAIN, SR.,  
an individual, THOMAS ROAD COMPANY,  
24 and DONA MICELI, an individual,

25 Defendants.

CASE NO. 09cv2653 DMS AJB

**FIRST AMENDED COMPLAINT FOR:**

- 1) **VIOLATION OF SECURITIES EXCHANGE ACT;**
  - 2) **FRAUD AND FRAUD IN THE INDUCEMENT;**
  - 3) **BREACH OF CONTRACT;**
  - 4) **VIOLATION OF RICO;**
  - 5) **CONSPIRACY TO VIOLATE RICO;**
  - 6) **CIVIL CONSPIRACY;**
  - 7) **UNJUST ENRICHMENT; AND**
  - 8) **FRAUDULENT CONVEYANCE**
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Now come plaintiffs ROBERT ALBERGO and DAVID IRWIN (collectively, “PLAINTIFFS”) and for their first amended complaint against IMMUNOSYN CORPORATION, ARGYLL BIOTECHNOLOGIES, LLC, JAMES T. MICELI, DOUGLAS A. MCCLAIN, JR., ARGYLL EQUITIES, LLC, STEPHEN FERRONE, DOUGLAS A. MCCLAIN, SR., THOMAS ROAD COMPANY, and DONA MICELI (collectively, “DEFENDANTS”) state as follows:

### Parties

1. Plaintiff, Dr. Robert Albergo (“ALBERGO”), is a resident of Florida.
2. Plaintiff, David Irwin (“IRWIN”), is a resident of Florida.
3. Defendant, Immunosyn Corporation (“IMMUNOSYN”), is a Delaware corporation with its principal place of business at 10815 Rancho Bernardo Road, Suite 101, San Diego, California.
4. Defendant, Argyll Biotechnologies, LLC (“ARGYLL BIOTECH”), is a Texas limited liability company with its principal place of business at 10815 Rancho Bernardo Road, Suite 101, San Diego, California.
5. Defendant, Argyll Equities, LLC (“ARGYLL EQUITIES”), is a Texas limited liability company, with its principal place of business at 10815 Rancho Bernardo Road, Suite 101, San Diego, California.
6. Defendant, James T. Miceli (“MICELI”), is a resident of California. MICELI is the Chief Executive Officer of ARGYLL BIOTECH and ARGYLL EQUITIES.
7. Defendant, Douglas A. McClain, Jr. (“MCCLAIN, JR.”), is a resident of Georgia. MCCLAIN is the President of ARGYLL BIOTECH and ARGYLL EQUITIES and the Chief Financial Officer of IMMUNOSYN.
8. Defendant, Stephen Ferrone (“FERRONE”), is a resident of Illinois and/or California. FERRONE is the President of IMMUNOSYN.
9. Defendant, Douglas A. McClain, Sr. (“MCCLAIN SR.”) is a resident of Texas. MCCLAIN SR. is an owner and/or controlling person with respect to ARGYLL EQUITIES

1 and/or ARGYLL BIOTECH and holds himself out to be ARGYLL BIOTECH's Chief Science  
2 Officer.

3 10. Defendant, Thomas Road Company ("THOMAS ROAD CO."), is a shell  
4 company, wholly owned and controlled by James T. Miceli.

5 11. Defendant, Dona Miceli ("DONA MICELI"), is a resident of California and the  
6 wife of James T. Miceli.

### 7 **Jurisdiction and Venue**

8 12. This action is brought personally by PLAINTIFFS pursuant to the Securities  
9 Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78m, 78r and 78t and RICO statute 18  
10 U.S.C. § 1964 *et seq.* Jurisdiction of this court and venue in this district are proper pursuant to  
11 15 U.S.C. § 78aa and 18 U.S.C. § 1964 *et seq.* Further, jurisdiction is conferred under 15 U.S.C.  
12 § 1332(a)(1) because PLAINTIFFS and DEFENDANTS are citizens of different states and the  
13 amount in controversy exceeds \$75,000 in damages.

### 14 **Governing Law**

15 13. Pursuant to 15 U.S.C. § 78m, IMMUNYSON and its principals are required to  
16 maintain public filings and books and records for the benefit of investors that accurately and  
17 fairly reflect the transactions and dispositions of the assets of the issuer and maintain financial  
18 records that conform with generally accepted accounting principles.

19 14. Pursuant to 15 U.S.C. § 78r (a), "Any person who shall make or cause to be made  
20 any statement in any application, report, or document filed pursuant to this chapter or any rule or  
21 regulation thereunder or any undertaking contained in a registration statement as provided in  
22 subsection (d) of section 78o of this title, which statement was at the time and in the light of the  
23 circumstances under which it was made false or misleading with respect to any material fact,  
24 shall be liable to any person (not knowing that such statement was false or misleading) who, in  
25 reliance upon such statement, shall have purchased or sold a security at a price which was  
26 affected by such statement, for damages caused by such reliance, unless the person sued shall  
27 prove that he acted in good faith and had no knowledge that such statement was false or  
28

1 misleading. A person seeking to enforce such liability may sue at law or in equity in any court of  
2 competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking  
3 for the payment of the costs of such suit, and assess reasonable costs, including reasonable  
4 attorneys' fees, against either party litigant.”

5       15. Pursuant to 15 U.S.C. § 78t (a) and (b), “Every person who, directly or indirectly,  
6 controls any person liable under any provision of this chapter or of any rule or regulation  
7 thereunder shall also be liable jointly and severally with and to the same extent as such  
8 controlled person to any person to whom such controlled person is liable, unless the controlling  
9 person acted in good faith and did not directly or indirectly induce the act or acts constituting the  
10 violation or cause of action.” “It shall be unlawful for any person, directly or indirectly, to do  
11 any act or thing which it would be unlawful for such person to do under the provisions of this  
12 chapter or any rule or regulation thereunder through or by means of any other person.”

13       16. Pursuant to 17 C.F.R. § 240.10b-5, “It shall be unlawful for any person, directly  
14 or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails  
15 or of any facility of any national securities exchange, (a) To employ any device, scheme, or  
16 artifice to defraud, (b) To make any untrue statement of a material fact or to omit to state a  
17 material fact necessary in order to make the statements made, in the light of the circumstances  
18 under which they were made, not misleading, or (c) To engage in any act, practice, or course of  
19 business which operates or would operate as a fraud or deceit upon any person, in connection  
20 with the purchase or sale of any security.

21       17. Pursuant to 18 U.S.C. § 1964 (c) Any person injured in his business or property  
22 by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate  
23 United States district court and shall recover threefold the damages he sustains and the cost of  
24 the suit, including a reasonable attorney’s fee, except that no person may rely upon any conduct  
25 that would have been actionable as fraud in the purchase or sale of securities to establish a  
26 violation of section 1962.

1           18. Pursuant to 18 U.S.C. § 1962 (a) It shall be unlawful for any person who has  
 2 received any income derived, directly or indirectly, from a pattern of racketeering activity or  
 3 through collection of an unlawful debt in which such person has participated as a principal  
 4 within the meaning of section 2, title 18, United States Code, to use or invest, directly or  
 5 indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest  
 6 in, or the establishment or operation of, any enterprise which is engaged in, or the activities of  
 7 which affect, interstate or foreign commerce. Pursuant to 18 U.S.C. § 1962 (c) It shall be  
 8 unlawful for any person employed by or associated with any enterprise engaged in, or the  
 9 activities of which affect, interstate or foreign commerce, to conduct or participate, directly or  
 10 indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or  
 11 collection of unlawful debt. Racketeering is defined by Section 1961 and includes mail fraud.

#### 12                           **Background of the Defendants and Corporate Entities**

13           19. On or about January 15, 1999, MICELI, MCCLAIN, SR. and MCCLAIN, JR.  
 14 entered into a written partnership agreement, "for the purpose of devising, creating, designing,  
 15 pursuing, formulating, enacting and engaging in all companies, corporations, partnerships or  
 16 legal entities which are or have been or will be used by the parties for the purpose of creating any  
 17 income or tangible item recognized as having value foreign or domestic" with a term of "fifteen  
 18 years." (hereinafter the "Partnership Agreement").

19           20. On or about August 26, 1999, MICELI was convicted of felony money  
 20 laundering, forgery, perjury and theft over \$100,000 in the State of Illinois.

21           21. MCCLAIN, SR., MCCLAIN and MICELI worked together at International Profit  
 22 Associates ("IPA") in Illinois.

23           22. Through IPA, MCCLAIN SR. became involved with a public entity known as  
 24 Nextpath Technologies. MCCLAIN SR. was able to obtain and sell a large volume of shares of  
 25 Nextpath Technologies to unsuspecting investors, based on false information concerning the  
 26 company, for approximately \$6,000,000.

23. MCCLAIN SR. received funds and/or distributed Nextpath Technologies stock certificates through the US mail or other carriers interstate to unsuspecting investors.

24. MCCLAIN SR. communicated with prospective investors over the telephone interstate, to convince and deceive them into purchasing Nextpath Technologies stock.

25. Salvatore and Frank Bramante (hereinafter the "Bramantes") were investors duped by MCCLAIN SR. to buy Nextpath Technologies stock based upon false and misleading information.

26. The Bramantes were promised unrestricted stock in Nextpath Technologies, a public company, but after much delay, were provided with restricted stock by MCCLAIN, SR.

27. The Bramantes sued MCCLAIN, SR. in United States District Court for the District of Massachusetts and obtained judgment against him for about \$4,500,000.

28. After MCCLAIN, SR.'s involvement with Nextpath Technologies, MCCLAIN, SR., MCCLAIN, JR. and MICELI left IPA and worked together in an entity called FIT Management.

29. Money from the sale of Nextpath Technologies stock was used to finance the start of FIT Management. FIT Management financed the start of ARGYLL EQUITIES.

30. As a result of numerous civil judgments against FIT Management and/or MCCLAIN, SR., MCCLAIN, SR. did not publically own ARGYLL EQUITIES, but instead operated for the company as a consultant and secret owner.

31. ARGYLL EQUITIES had the appearance of a legitimate financial/stock lender, but operated more akin to a Ponzi scheme, as described in a lawsuit brought by Gerald W. Schlieff, Southern District of Texas, Houston Division, C.A. No. 08-cv-2128. The Gerald W. Schlieff lawsuit alleges that MICELI, MCCLAIN SR. and others violated the Racketeer Influenced and Corrupt Organizations Act ("RICO") and committed numerous racketeering activities. The Complaint filed by Gerald W. Schlieff is incorporated herein by reference.

1           32.     ARGYLL EQUITIES was used to defraud several investors and/or companies,  
2 including but not limited to Gerald W. Schlieff, Siko Venture Limited, Louis D. Paolino, Jr., and  
3 Servicios Directivos Servia, S.A. de C.V. Each of these persons/entities brought civil lawsuits  
4 against ARGYLL EQUITIES.

5           33.     Upon information and belief, numerous unsatisfied civil judgments exist against  
6 ARGYLL EQUITIES, FIT Management, and MCCLAIN, SR. for fraud, the Ponzi scheme  
7 described in the Gerald Schlieff Complaint, securities fraud and/or stock lending fraud.

8           34.     During ARGYLL EQUITIES' demise as a reputable and financially stable  
9 company, through numerous lawsuits and judgments entering against it, ARGYLL EQUITIES'  
10 financed the start up of ARGYLL BIOTECH.

11           35.     ARGYLL BIOTECH and/or ARGYLL EQUITIES financed the start up of  
12 IMMUNOSYN and financially control IMMUNOSYN.

13           36.     At all relevant time hereto, ARGYLL BIOTECH claimed to own, develop, and  
14 promote a drug called SF-1019.

15           37.     At all relevant times hereto, IMMUNOSYN claimed in its SEC filings and  
16 website to own the exclusive rights to market and sell SF-1019.

17           38.     Similar to MCCLAIN, SR.'s false and misleading promotion and sale of Nextpath  
18 Technologies stock, the DEFENDANTS have engaged in the false and misleading promotion of  
19 IMMUNOSYN stock, for financial gain, to the detriment of others.

20           39.     The DEFENDANTS have been promoting IMMUNOSYN stock through various  
21 mediums so that they may sell their own stock at a great profit, while investors, such as  
22 PLAINTIFFS were unable to sell their stock because it was restricted.

23           40.     Upon information and belief, the DEFENDANTS, personally or through entities  
24 that they control, have sold IMMUNOSYN stock from April 2007 through the present totaling  
25 more than \$14,000,000.

1           41.     The DEFENDANTS were engaged in a scheme to sell SF-1019 for their own  
2 financial gain outside of the exclusive license held by the publically traded company they  
3 control, IMMUNOSYN.

4           42.     The DEFENDANTS distributed SF-1019 and IMMUNOSYN stock certificates  
5 interstate through the US mail or other carriers.

6           43.     The DEFENDANTS used email, websites and telephone communications to sell  
7 SF-1019 interstate.

8           44.     MICELI, MCCLAIN, SR., and MCCLAIN, JR. have been personally involved in  
9 the distribution of SF-1019 throughout the United States.

10          45.     MICELI, MCCLAIN, SR., and MCCLAIN, JR. have been personally involved in  
11 the retention of profits from the sale of SF-1019.

12          46.     MICELI, MCCLAIN, SR., and MCCLAIN, JR. have been personally involved in  
13 the development of media statements and promotional statements made on their companies'  
14 websites concerning SF-1019.

15          47.     MICELI, MCCLAIN, SR., and MCCLAIN, JR. control ARGYLL EQUITIES,  
16 ARGYLL BIOTECH and IMMUNOSYN.

17          48.     MICELI, MCCLAIN, SR., and MCCLAIN, JR. have financially stripped  
18 ARGYLL EQUITIES and ARGYLL BIOTECH of assets purposely and through the judgments  
19 rendered against said companies due to their active fraud. Prior to leaving ARGYLL EQUITIES  
20 and ARGYLL BIOTECH "judgment proof," said entities were used by MICELI, MCCLAIN,  
21 SR. and MCCLAIN, JR. to commit fraud upon the PLAINTIFFS.

22          49.     With respect to the operation of ARGYLL EQUITIES and ARGYLL BIOTECH,  
23 MICELI, MCCLAIN, SR., and MCCLAIN, JR. have failed to follow corporate formalities,  
24 segregate their personal assets from business assets, and make required tax filings for money  
25 received by them from the companies and money paid to employees, consultants, and 1099  
26 labor.



1           50.     MICELI, MCCLAIN, SR., and MCCLAIN, JR. are the alter egos of ARGYLL  
2     EQUITIES and ARGYLL BIOTECH.

3                                   **The Fraud Upon the Plaintiffs**

4           51.     In early 2006, ALBERGO was introduced by Dr. Jochen Brenner to MICELI and  
5     MCCLAIN, SR.

6           52.     In early 2006, through a series of telephone calls and mailings between MICELI  
7     and/or MCCLAIN, SR. on the one hand, and ALBERGO on the other hand, ALBERGO was  
8     convinced by MICELI and MCCLAIN, SR. that he should make a financial investment in a start-  
9     up company because the start-up company had an exclusive right to sell a super drug called SF-  
10    1019.

11          53.     During these initial telephone calls with ALBERGO related to the efficacy of SF-  
12    1019, MCCLAIN, SR. held himself out to be the Chief Science Officer of ARGYLL BIOTECH  
13    and a **medical doctor** trained in England.

14          54.     MCCLAIN, SR. and MICELI told ALBERGO that the start-up company was the  
15    next Google and that SF-1019 cured multiple sclerosis and diabetic skin ulcers.

16          55.     MCCLAIN, SR. and MICELI told ALBERGO that they had studies to  
17    conclusively prove the effectiveness of SF-1019, but that the studies were not yet ready for  
18    publication.

19          56.     MCCLAIN, SR. and MICELI told ALBERGO that SF-1019 had no side effects  
20    and that it was totally safe.

21          57.     MCCLAIN, SR. and MICELI told ALBERGO that the money they wanted him to  
22    invest would be used to fund the start-up operations.

23          58.     MCCLAIN, SR. and MICELI told ALBERGO that the start-up company would  
24    definitely be listed on the NASDAQ shortly after its public offering.

25          59.     MCCLAIN, SR. and MICELI told ALBERGO that an Osmond family member  
26    had invested millions of dollars in the start-up company and that one of the Osmond brothers'  
27    multiple sclerosis was dramatically improved by taking SF-1019.

1           60.     MCCLAIN, SR. also claimed to ALBERGO that studies had been completed in  
2 Utah and Mexico on SF-1019 with “unbelievable success.”

3           61.     MCCLAIN, SR. and MICELI told ALBERGO that SF-1019 would be given  
4 orphan status because of its effectiveness and that such would lead to expedited FDA approval.

5           62.     MCCLAIN, SR. also claimed that SF-1019 was going to be approved in Malaysia  
6 in the short term.

7           63.     MCCLAIN, SR. and MICELI told ALBERGO that he would receive stock  
8 certificates in the start-up company shortly after making his investment.

9           64.     Prior to making his purchase, MCCLAIN, SR. and MICELI told ALBERGO that  
10 he could buy the stock at \$10/share, but that the opening price of the stock would be  
11 \$15.50/share.

12           65.     On or about March 13, 2006, ALBERGO signed two documents entitled  
13 “Agreement for the Purchase of Common Stock,” to purchase sixty thousand shares of  
14 unrestricted stock in a company to be called “Nurovysn Biotech Corporation” for \$600,0000  
15 from a company called Argyll Equities, LLC (hereinafter “First Argyll Contracts”).

16           66.     On or about March 13, 2006, relying upon the representations of MICELI and  
17 MCCLAIN, SR., ALBERGO paid \$600,000 to ARGYLL EQUITIES pursuant to the First Argyll  
18 Contracts.

19           67.     Pursuant to the First Argyll Contracts, ARGYLL EQUITIES was to “sell, transfer  
20 and assign” sixty thousand shares of “free-trading shares of common stock in Nurovysn Biotech  
21 Corporation” to ALBERGO within 45 days of receipt of the purchase funds.

22           68.     On or about March 24, 2006, relying upon the representations of MICELI,  
23 MCCLAIN, SR. and Mr. Brenner, ALBERGO paid \$400,000 to Mr. Brenner via wire transfer  
24 for an additional 40,000 shares of unrestricted stock in “Nurovysn Biotech Corporation”  
25 bringing his total investment in the company to \$1,000,000.

26           69.     ALBERGO was not provided with any SEC filings for Nurovysn Biotech  
27 Corporation prior to making his purchase of 100,000 shares.

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1           70.     ARGYLL EQUITIES breached the First Argyll Contracts by failing to deliver  
2 any of the free-trading shares of common stock to ALBERGO within 45 days of receipt of  
3 ALBERGO's purchase funds.

4           71.     In early 2006, Dr. Jochen Brenner represented to IRWIN that he was selling stock  
5 in a company called Nurovysn Biotech Corporation that was the sole licensee of a new wonder  
6 drug.

7           72.     Based upon representations by Dr. Brenner that Nurovysn Biotech Corporatoin  
8 (nka IMMUNOSYN) had exclusive rights to make and sell a new drug that cured severe cases of  
9 diabetes, statistical studies and doctor's recommendations presented by Dr. Brenner to IRWIN,  
10 the imminent nature of the success of the new company as represented to IRWIN by Dr. Brenner,  
11 and the representation that the stock could be bought for \$10/share but would go public for  
12 \$15.50/share, IRWIN purchased \$25,000 worth of stock in the start-up company from ARGYLL  
13 EQUITIES pursuant to a written agreement.

14           73.     Prior to IRWIN's purchase on or about April 2006, Dr. Brenner represented to  
15 IRWIN that the company first identified as Nurovysn Biotech Corporation (nka IMMUNOSYN)  
16 would obtain approval for the sale of SF-1019 in the United States in 1 to 2 weeks and that the  
17 stock would be trading in the same time frame.

18           74.     MCCLAIN, SR. and MICELI have used Dr. Brenner as an agent to promote and  
19 sell Nurovysn Biotech Corporation (nka IMMUNOSYN) stock and to further their goals as set  
20 forth in the written "Partnership Agreement."

21           75.     Dr. Brenner disclosed to IRWIN that he was selling stock for ARGYLL  
22 EQUITIES and that the information he was providing to IRWIN came from MCCLAIN, SR. and  
23 MICELLI.

24           76.     On or about April 2006, relying upon the representations of Dr. Brenner, IRWIN  
25 paid \$25,000 to ARGYLL EQUITIES for stock in a company called Nurovysn Biotech  
26 Corporation (nka IMMUNOSYN).

27           77.     From March-April 2006 through to the present, MCCLAIN, SR. has continued to  
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1 promote SF-1019, claiming its imminent success and that the stock is about to “take off.”

2 78. On March 26, 2007, prior to the receipt of the stock certificates by IRWIN and  
3 ALBERGO, Dr. Brenner represented to IRWIN and ALBERGO, based upon information  
4 supplied by MCCLAIN, SR. and MICELI, that SF-1019 was approved for sale in Canada and  
5 that orders had been received for 130,000 vials per month at \$200.00/vial and that the stock  
6 would be cleared for trading on April 3, 2007.

7 79. On or about May 7, 2007, IRWIN and ALBERGO received a letter from MICELI  
8 enclosing copies of the long promised stock certificates for the purchases made in 2006. The  
9 May 7, 2007 letter required that IRWIN and ALBERGO sign a Stock Purchase Agreement to  
10 receive their original certificates (the “Second Argyll Contracts”).

11 80. The Second Argyll Contracts contained terms and conditions not set forth in the  
12 First Argyll Contracts. ARGYLL EQUITIES and MICELI pulled a bait and switch by now  
13 disclosing in the pages within the Second Argyll Contracts that the shares of stock being  
14 purchased by ALBERGO and IRWIN were restricted stock and by providing reference to SEC  
15 filings that were not entirely consistent with the prior and ongoing representations being made to  
16 ALBERGO and IRWIN. The SEC filings were not alarming to ALBERGO and IRWIN to the  
17 extent inconsistent with the verbal representation being made to them because MICELI,  
18 MCCLAIN, SR. and/or Dr. Brenner were representing to ALBERGO and IRWIN that the  
19 positive information available to them could not yet be made available to the public.

20 81. Based upon the representations *supra*, the repeated representations as to the  
21 imminent success of IMMUNOSYN and the efficacy of SF-1019, and given the requirement that  
22 they sign the Second Argyll Contracts to receive their original stock certificates that had been  
23 paid for approximately a full year prior, IRWIN and ALBERGO executed the Second Argyll  
24 Contracts.

25 82. Upon information and belief, one or more of the DEFENDANTS are selling SF-  
26 1019 in the United States and/or Mexico.

27 83. Upon information and belief, one or more of the DEFENDANTS are distributing  
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1 SF-1019 in the United States and/or Mexico.

2 84. Upon information and belief, Alan Osmond is paid by one or more of the  
3 DEFENDANTS to promote SF-1019.

4 85. IMMUNOSYN claims in its SEC filings, signed by FERRONE and MCCLAIN,  
5 JR., to have an exclusive worldwide license to market and sell SF-1019.

6 86. ALBERGO relied upon the aforementioned representations made by MICELI,  
7 MCCLAIN, SR., and Dr. Brenner in purchasing IMMUNOSYN stock from them and/or their  
8 company, ARGYLL EQUITIES.

9 87. IRWIN relied upon the aforementioned representations made by Dr. Brenner in  
10 purchasing IMMUNOSYN stock from ARGYLL EQUITIES.

11 88. ALBERGO and IRWIN continued to hold their IMMUNOSYN stock because of  
12 the continuing positive representations by MCCLAIN, SR., MICELI, and Dr. Brenner after the  
13 purchase of said stock and because of the representations made on IMMUNOSYN's website and  
14 ARGYLL BIOTECH's website.

15 89. Recently, MICELI represented to ALBERGO, IRWIN and others that a New  
16 York law firm was involved in the imminent purchase of IMMUNOSYN stock for \$20/share (the  
17 "Buyout").

18 90. Separately, IMMUNOSYN reported that the Buyout was unsubstantiated market  
19 rumors.

20 91. MICELI was personally involved in creating market rumors concerning a Buyout  
21 for his own financial gain and to cause ALBERGO, IRWIN and others to continue to hold their  
22 IMMUNOSYN stock and to delay legal action against him.

23 92. IMMUNOSYN has reported no revenue for 2007 and 2008. IMMUNOSYN's  
24 10-Q dated May 15, 2008 claims, "As of the date of this report, we have no revenue and limited  
25 operations." This 10-Q is signed by MCCLAIN and FERRONE.

26 93. SF-1019 has been sold for a profit and/or revenue in the United States during at  
27 least 2008.

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94. The DEFENDANTS have been selling SF-1019 through various commercial channels, including Dr. Morales in Texas, and the DEFENDANTS have failed to report and/or allocate income to IMMUNOSYN to the detriment of its stockholders, including PLAINTIFFS, in violation of IMMUNOSYN's exclusive right to market and sell SF-1019.

95. The SEC filings made by IMMUNOSYN, as reported and/or signed by MCCLAIN and FERRONE, have been false and/or misleading because SF-1019 is being sold by the DEFENDANTS.

### COUNT I – THE EXCHANGE ACT

(Against MICELI, MCCLAIN, SR., MCCLAIN, JR., IMMUNOSYN, and FERRONE)

96. PLAINTIFFS hereby incorporate and restate herein the foregoing paragraphs 1-95 as if fully stated herein.

97. The DEFENDANTS are in violation of 15 U.S.C. § 78r and/or 17 C.F.R. § 240.10b-5 by making false and/or misleading statements concerning IMMUNYSON and SF-1019 in SEC filings, including but not limited to: a) failing to report income generated from the sale of SF-1019, b) claiming in SEC filings made January 3, 2007 that IMMUNYSON had the “exclusive worldwide license to market, distribute and sell . . . SF-1019,” and c) failing to disclose that SF-1019 was being sold through channels outside of IMMUNYSON.

98. ALBERGO and IRWIN relied upon the SEC filings of IMMUNOSYN to accurately report the financials of the company, material events, and the assets/licenses held by IMMUNOSYN.

99. Based upon *supra* and MCCLAIN, SR. and MICELI's claim that IMMUNOSYN would hold the exclusive license to sell SF-1019, ALBERGO and IRWIN purchased IMMUNOSYN stock from them and/or ARGYLL EQUITIES.

100. Based upon the SEC filings and DEFENDANTS' representations, ALBERGO and IRWIN believed that SF-1019 could only be sold by IMMUNOSYN and that proceeds from the sale of SF-1019 would flow to IMMUNOSYN.

1           101. Based upon the SEC filings and MCCLAIN, SR.'s continuing representations as  
2 to the efficacy of SF-1019, ALBERGO and IRWIN continued to hold their stock and not attempt  
3 to sell it.

4           102. In 2006, when MICELI and MCCLAIN, SR. were attempting to sell  
5 IMMUNOSYN stock to ALBERGO and to IRWIN, through Dr. Brenner, neither of them told  
6 ALBERGO or IRWIN that the stock would be restricted stock.

7           103. The stock certificates finally sent to IRWIN and ALBERGO were restricted stock,  
8 preventing the sale of said stock under certain conditions.

9           104. One or more of the DEFENDANTS are selling SF-1019 without any proceeds  
10 flowing to IMMUNYSON.

11           105. MCCLAIN, SR. has personally visited with individuals in California and Utah to  
12 arrange for the sale of SF-1019 to them, outside the exclusive license held by IMMUNOSYN.

13           106. Individuals have been sold SF-1019, as arranged for by MCCLAIN, SR., with the  
14 knowledge and consent of MICELI, MCCLAIN, JR., and FERRONE.

15           107. MCCLAIN, JR. and FERRONE, with knowledge of the sale of SF-1019, have  
16 failed to require that income derived from said sales be attributed to IMMUNOSYN, to the  
17 detriment of its stockholders, including IRWIN and ALBERGO.

18           108. MICELI, MCCLAIN, SR., MCCLAIN, JR. and FERRONE are jointly and  
19 severally liable for the aforementioned unlawful conduct committed personally or through their  
20 control of others.

21           109. At this time, IMMUNSOYN stock is trading for under a dollar. The volume  
22 being traded would not support the sale of a large volume of shares without further depressing  
23 the price. The stock purchased by ALBERGO and IRWIN is essentially worthless.

24           110. ALBERGO has suffered approximately \$1 million in damages and IRWIN has  
25 suffered approximately \$25,000 in damages as a result of the DEFENDANTS' violations of the  
26 Exchange Act.



111. ALBERGO and IRWIN are entitled to compensatory damages in amount to be proven at trial against MICELI, MCCLAIN, SR., MCCLAIN, JR., IMMUNOSYN, and FERRONE, jointly and severally, for their violations of the Exchange Act, plus interest, costs and attorneys fees.

## COUNT II – FRAUD AND FRAUD IN THE INDUCEMENT

(Against MICELI, MCCLAIN, SR. and ARGYLL EQUITIES, LLC)

112. PLAINTIFFS hereby incorporate and restate herein the foregoing paragraphs 1-111 as if fully stated herein.

113. In violation of common law or statute, MICELI, MCCLAIN, SR., Dr. Brenner , and through them ARGYLL EQUITIES, LLC, made a number of representations to ALBERGO and IRWIN, *supra* at paragraphs 26 through 66, in order to induce them to purchase IMMUNOSYN stock.

114. The representations made by MICELI, Dr. Brenner, and/or MCCLAIN, SR. at *supra*, were false and/or misleading and MICELI and MCCLAIN, SR. knew said statements were false or misleading when made, because: 1) MCCLAIN, SR. is not a medical doctor, 2) it is not proven that SF-1019 cures multiple sclerosis and diabetic skin ulcers, 3) when stated, no studies existed to conclusively prove the effectiveness of SF-1019, 4) IMMUNOSYN was never listed on the NASDAQ, 5) no Osmond family member invested millions in IMMUNOSYN, 6) SF-1019 was sold outside of IMMUNOSYN's exclusive license, 7) the money paid by ALBERGO was not used for IMMUNOSYN's start-up operations, 8) when stated, there was no proof that SF-1019 had no side effects and that it was totally safe, 9) SF-1019 has not achieved orphan drug status or FDA approval, 10) SF-1019 has not been approved for sale anywhere in the world, 11) no Canadian order was placed for 130,000 vials of SF-1019 per month at \$200/vial; 12) the stock opened for trading at \$15.00 per share and closed at \$9 per share on the opening day; 13) the stock price was being manipulated and inflated by MICELI and MCCLAIN, SR.; and 14) the stock was not cleared for trading on April 3, 2007.

115. The truth behind the representations made by MICELI, Dr. Brenner and



1 MCCLAIN, SR. was concealed from PLAINTIFFS and such concealment and lack of  
2 knowledge by PLAINTIFFS should toll the statute of limitations with respect to said claims of  
3 fraud and fraudulent inducement.

4 116. If PLAINTIFFS had not been provided with false and/or misleading information  
5 by MICELI and/or MCCLAIN, SR., they would not have purchased IMMUNOSYN stock from  
6 them and/or their company, ARGYLL EQUITIES.

7 117. ALBERGO reasonably relied upon the DEFENDANTS' material representations  
8 in purchasing and continuing to hold IMMUNOSYN stock.

9 118. As a result of the purchase of stock in IMMUNYSON, ALBERGO has suffered  
10 damages in excess of \$1 million.

11 119. IRWIN reasonably relied upon the material representations of Dr. Brenner, all of  
12 which proved to be false, in purchasing IMMUNOSYN stock.

13 120. MICELI and MCCLAIN, SR. knowingly communicated false or misleading  
14 information to IRWIN and ALBERGO through Dr. Brenner to induce them to purchase  
15 IMMUNOSYN stock.

16 121. As a result of the purchase of stock in IMMUNYSON, IRWIN suffered damages  
17 in excess of \$25,000.

18 122. ALBERGO and IRWIN are entitled to rescission of the First Argyll Contracts and  
19 Second Argyll Contracts and restitution of monies paid under said agreements, damages for  
20 fraud, including direct, consequential and punitive damages, plus interest, costs and attorneys  
21 fees.

22 123. The conduct of MICELI and MCCLAIN, SR., as alleged above, was oppressive,  
23 fraudulent and malicious and was committed willfully and/or with reckless disregard for the  
24 rights of PLAINTIFFS, and without just cause or excuse. Accordingly, PLAINTIFFS are  
25 entitled to exemplary damages in an amount to be determined at trial.

**COUNT III – BREACH OF CONTRACT**

(Against ARGYLL EQUITIES, LLC, MICELI and MCCLAIN, SR.)

124. PLAINTIFFS hereby incorporate and restate herein the foregoing paragraphs 1-123 as if fully stated herein.

125. Based upon the false representations *supra*, PLAINTIFFS entered into the “First Argyll Contracts” and the “Second Argyll Contracts) to purchase stock from ARGYLL EQUITIES in a company first called Nurovysn Biotech Corporation and subsequently known as IMMUNSOYN.

**Albergo Contracts**

126. MICELI and MCCLAIN, SR. told ALBERGO that his stock certificates would be delivered to him immediately after his investment, that the stock would go public immediately after his investment and become listed on the NASDAQ, that approvals for SF-1019 would be achieved imminently from the FDA, that his money would be used for the start-up company operations, and that IMMUNOSYN would have the exclusive right to sell SF-1019.

127. The First Argyll Contracts indicated that ALBERGO would receive unrestricted stock in a company called Nurovysn Biotech Corporation.

128. ALBERGO never received the unrestricted stock in Nurovysn Biotech Corporation within the agreed time frame.

129. The Second Argyll Contracts said that ALBERGO would receive restricted stock in a company called IMMUNOSYN.

130. There was no additional consideration for the Second Argyll Contracts.

131. ALBERGO was induced to enter into the Second Argyll Contracts because of the numerous verbal representations set forth *supra* and because he had been out of pocket \$1,000,000 for about a year without stock certificates to secure his investment.

132. MICELI and MCCLAIN, SR. breached their oral promises to ALBERGO because *inter alia* he was not timely delivered unrestricted stock certificates, the start-up company (Nurovysn Biotech Corporation or IMMUNOSYN) did not get listed on the NASDAQ, SF-1019

1 has not obtained FDA approval, the alleged Canadian orders were not real, his investment was  
2 not used exclusively for the start-up company, and IMMUNOSYN was not given the exclusive  
3 right to sell SF-1019.

4 133. ARGYLL EQUITIES and MICELI breached the First Argyll Contracts by failing  
5 to deliver the stock as promised.

6 134. MICELI and MCCLAIN, SR. fraudulently induced ALBERGO to enter into the  
7 Second Argyll Contracts and breached their oral promises with respect to the use of his  
8 investment and the accomplishment of material events, as represented and set forth above.

9 **Irwin Contracts**

10 135. At the direction of, and based on representations by, MICELI and MCCLAIN,  
11 SR., Dr. Brenner told IRWIN that his stock certificates would be delivered to him immediately  
12 after his investment, that the stock would go public immediately after his investment and become  
13 listed on the NASDAQ, that approvals for SF-1019 would be achieved imminently from the  
14 FDA, and that IMMUNOSYN would have the exclusive right to sell SF-1019.

15 136. Based upon the promises and representations set forth *supra*, IRWIN agreed to  
16 pay for stock in a company now known as IMMUNOSYN and ARGYLL EQUITIES agreed to  
17 deliver unrestricted stock to him in the new company.

18 137. ARGYLL EQUITIES breached the agreement with Irwin by failing to send him  
19 unrestricted stock certificates immediately after his investment.

20 138. MICELI and MCCLAIN, SR. breached their oral promises made to IRWIN via  
21 Dr. Brenner, by failing to take the company public immediately after their investment, by failing  
22 to achieve NASDAQ listing, by failing to obtain approvals from the FDA, by failing to use  
23 IRWIN's money exclusively for IMMUNOSYN's operations, and by failing to maintain  
24 IMMUNOSYN's exclusive right to sell SF-1019.

25 139. MICELI and MCCLAIN, SR. induced IRWIN to sign the Second Argyll  
26 Contracts based upon continuing misrepresentations through Dr. Brenner, including but not  
27 limited to, the representations that the stock would open at \$15.50/per share and that the stock  
28

1 had been approved for sale in Canada and that an order for 130,000 vials per month at \$200/vial  
2 had been placed.

3 140. PLAINTIFFS have been harmed by MICELI, MCCLAIN, SR. and ARGYLL  
4 EQUITIES breaches and by the false statements made to induce PLAINTIFFS to enter two  
5 variations of stock purchase agreements.

6 141. PLAINTIFFS are entitled to damages in amount to be proven at trial against  
7 MICELI, MCCLAIN, SR., and ARGYLL EQUITIES, LLC. for their breaches, plus interest,  
8 costs and attorneys fees.

9 **COUNT IV – VIOLATION OF RICO**

10 (Against MICELI, MCCLAIN, SR. and MCCLAIN, JR.)

11 141. PLAINTIFFS hereby incorporate and restate herein the foregoing paragraphs 1-  
12 140 as if fully stated herein.

13 142. MICELI, MCCLAIN, SR. and MCCLAIN, JR., operate as an enterprise through  
14 various entities as described *supra* and through their association and agreement to make money.

15 143. MICELI, MCCLAIN, SR. and MCCLAIN, JR., have engaged in a pattern of  
16 racketeering activity, to the detriment of others, including ALBERGO and IRWIN.

17 144. MICELI, MCCLAIN, SR. and MCCLAIN, JR., have engaged in monetary  
18 transactions (including but not limited to the creation of IMMUNOSYN and ARGYLL  
19 BIOTECH) with money derived from unlawful activities and/or racketeering activity in prior  
20 enterprises.

21 145. As a result of the unlawful conduct and RICO violations committed by MICELI,  
22 MCCLAIN, SR. and MCCLAIN, JR., ALBERGO and IRWIN have been damaged.

23 146. As a result of the unlawful conduct and RICO violations committed by MICELI,  
24 MCCLAIN, SR. and MCCLAIN, JR., ALBERGO and IRWIN are entitled to compensatory  
25 damages in an amount to be proven at trial, treble damages, interest, costs and attorneys fees.  
26  
27  
28

**COUNT V – CONSPIRACY TO VIOLATE RICO**

(Against MICELI, MCCLAIN, SR. and MCCLAIN, JR.)

147. PLAINTIFFS hereby incorporate and restate herein the foregoing paragraphs 1-146 as if fully stated herein.

148. RICO prohibits any person from conspiring to violate RICO.

149. MICELI, MCCLAIN, SR. and MCCLAIN, JR. had agreements and/or understandings with each other to engage in racketeering activities.

150. MICELI, MCCLAIN, SR. and MCCLAIN, JR. have committed racketeering activities.

151. ALBERGO and IRWIN were harmed by MICELI, MCCLAIN, SR. and MCCLAIN, JR.'s conspiracy to violate RICO and have suffered actual damages.

152. As a result of MICELI, MCCLAIN, SR. and MCCLAIN, JR.'s unlawful conspiracy to commit RICO violations, ALBERGO and IRWIN are entitled to compensatory damages in an amount to be proven at trial, treble damages, interest, costs and attorneys fees.

**COUNT VI – CIVIL CONSPIRACY**

(Against All DEFENDANTS)

153. PLAINTIFFS hereby incorporate and restate herein the foregoing paragraphs 1-152 as if fully stated herein.

154. The DEFENDANTS entered into an agreement with each other to commit one or more unlawful acts, including fraud and fraud in the inducement, against ALBERGO and IRWIN.

155. Through the DEFENDANTS' conspiracy and fraud, ALBERGO and IRWIN were sold IMMUNOSYN stock based upon numerous misrepresentations.

156. ALBERGO and IRWIN were harmed by the DEFENDANTS' conspiracy and fraud, and as a result thereof have suffered actual damages.

157. As a consequence of the DEFENDANTS' conspiracy and fraud, ALBERGO and IRWIN are entitled to compensatory damages in an amount to be proven at trial, plus interest,

costs and attorneys fees.

158. The conduct of DEFENDANTS, as alleged above, was oppressive, fraudulent and malicious and was committed willfully and/or with reckless disregard for the rights of PLAINTIFFS, and without just cause or excuse. Accordingly, PLAINTIFFS are entitled to exemplary damages in an amount to be determined at trial.

**COUNT VII – UNJUST ENRICHMENT**

(Against MICELI, MCCLAIN, SR. and ARGYLL EQUITIES)

159. PLAINTIFFS hereby incorporate and restate herein the foregoing paragraphs 1-158 as if fully stated herein.

160. MICELI, MCCLAIN, SR. and ARGYLL EQUITIES have been unjustly enriched by the sale of IMMUNYSON stock to ALBERGO and IRWIN to the extent of the profit received from the sale of said stock, and each said DEFENDANT should be required to disgorge that amount.

161. As a consequence, PLAINTIFFS are entitled to compensatory damages in an amount to be proven at trial, plus interest, costs and attorneys fees.

**COUNT VIII – FRAUDULENT TRANSFER**

(Against THOMAS ROAD COMPANY and DONA MICELI)

162. PLAINTIFFS hereby incorporate and restate herein the foregoing paragraphs 1-139 as if fully stated herein.

163. The THOMAS ROAD COMPANY is the alter ego of MICELI.

164. The THOMAS ROAD COMPANY never performed any work for ARGYLL EQUITIES, yet during 2006 and 2007 it received money from ARGYLL EQUITIES without providing any value in exchange.

165. ARGYLL EQUITIES is insolvent due to substantial judgments being obtained against it by creditors.

166. PLAINTIFFS have been damaged by the fraudulent transfer of money from ARGYLL EQUITIES to THOMAS ROAD COMPANY.

**WHEREFORE**, PLAINTIFFS pray for judgment against DEFENDANTS, and each of them, in favor of PLAINTIFFS as follows:

1. For compensatory damages according to proof;

1. For rescission and restitution as a result of the fraudulent inducement;

1 2. For compensatory damages according to proof;

2 3. For punitive damages;

3 On Count IV and V:

4 1. For compensatory damages according to proof;

5 2. For treble damages;

6 On Count VI:

7 1. For compensatory damages according to proof;

8 2. For punitive damages;

9 On Count VIII:

10 1. For a constructive trust on all amounts transferred;

11 2. For compensatory damages according to proof;

12 On All Counts:

13 1. For a pre-judgment order of attachment against the real and personal property  
14 of JAMES MICELI and/or DONA MICELI that may be found and attached to  
15 the extent of \$600,000 in the State of California;

16 2. For prejudgment interest;

17 3. For costs of suit incurred herein;

18 4. For reasonable attorneys' fees; and

19 5. For such other and further relief as the Court deems just and proper.

20  
21 Dated: May 3, 2010

22 **LAW OFFICES OF ANDREW J. TINE**

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties below by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Andrew J. Tine